

Remarks/Arguments:

Claims 1-11 and 13-16 were pending in the action. Claims 1, 2, 5, 8, 9, 11, 14 and 16 have been amended. Claims 7, 10 and 13 have been canceled. Claims 1-6, 8, 9, 11 and 14-16 are therefore pending.

Support for the amendments to claims 1 and 11 can be found in claims 7 and 13, as originally filed, respectively. Claims 2, 5, 8, 9, 14 and 16, which are dependent on either claims 1 and/or 11 have been amended accordingly. No new matter has been added.

Claims 1, 2, 7, 8 and 10 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 2,592,523 ("Ayers") in view of JP 2002-020765 ("Matsumoto"). Claims 3-6 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ayers and Matsumoto in view of U.S. Patent No. 6,059,962 ("Alexander"). Claims 9, 11, and 13-16 stand rejected under 35 U.S.C. § 103(a) over Ayers and Matsumoto in view of EP 0319615 ("Duisters"). Applicants respectfully submit that the pending claims are patentable over the cited references for at least the reasons set forth below.

Response to Rejections

Independent claim 1, 2, 7, 8 and 10 stand rejected as obvious over the combination of Ayers in view of Matsumoto. In addition, dependent claims 3-6 and 9, 11 and 13-16 also stand rejected based on the combination of Ayers and Matsumoto in view of either Alexander or Duisters. Applicants respectfully submit that the rejection of the claims is improper because Matsumoto is not prior art to the present application.

The present application claims priority to British Patent Application Nos. GB 0201457.9 and 0201461.1. Each of these priority documents have a filing date of January 23, 2002. The publication date of JP 2002-020765 is also January 23, 2002.

Prior art is defined by 35 U.S.C. § 102. Section 102(b) is inapplicable because the Matsumoto reference was not published more than one year prior to the international filing date of the application. Section 102(a) is implicated because it defines prior art as "patented or described in a printed publication in this or a foreign country, before the invention thereof." Therefore, a document is prior art only when published *before* the invention date. *Mahurkar v.*


C. R. Bard, Inc., 79 F.3d 1572, 1576 (Fed. Cir. 1996). The inquiry is for invention dates, not filing dates, but a patent is initially presumed to have been invented on its filing date. Therefore, this application is presumed to have been invented on January 23, 2002. Moreover, the M.P.E.P. instructs "for 35 U.S.C. 102(a) to apply, the reference must have a publication date *earlier in time* than the effective filing date of the application." M.P.E.P. § 706.02(a)(II)(C). Applicants submit that the Matsumoto reference was not published *before or earlier in time* than the filing date because it occurred on the same day.

Applicants respectfully submit, therefore, that because JP 2002-020765 is not prior art, the Office's reliance on the combination of Ayers in view of JP 2002-020765 (with or without Alexander or Duisters) is improper and the rejections must be withdrawn. Accordingly, Applicants submit that claims 1-11 and 13-16 are patentable over the cited references.

Conclusion

In view of the arguments as set forth above, Applicants respectfully submit that the pending application is in condition for allowance. Notice to this effect is earnestly solicited.

Respectfully submitted,



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